

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROY W. AND E. MARIE PETTIE,

Plaintiffs,

v.

SAXON MORTGAGE SERVICES, a  
corporation, WELLS FARGO (Master  
Servicer), FIRST HORIZON HOME LOAN  
CORPORATION, GERALD L. BAKER,  
FEDERAL RESERVE BANK, JANET L.  
YELLEN, and JOHN AND JANE DOES (1-  
25)

Defendants.

Case No. 3:08-cv-05089 RBL

ORDER GRANTING DEFENDANT  
SAXON MORTGAGE'S MOTION TO  
DISMISS AND GRANTING LEAVE TO  
AMEND COMPLAINT

This matter comes before the Court on Defendant Saxon Mortgage's Motion to Dismiss or for a More Definite Statement. [Dkt. # 16] The Court has considered the Motion, Plaintiffs' Response, and Saxon's Reply. [Dkts. # 16, 19, 20] For the reasons explained below, the Court GRANTS Saxon's motion for summary judgment on Plaintiffs' TILA claims and GRANTS Plaintiffs leave to amend their complaint to add a RESPA claim against Defendant Saxon Mortgage.

**BACKGROUND**

On February 23, 2007, Plaintiffs Roy and Marie Pettie refinanced their existing debt with a \$364,000.00 loan from Defendant First Horizon secured by a deed of trust encumbering Plaintiffs' real property located at 12208 118<sup>th</sup> Avenue, Puyallup, Washington. Under the deed of trust, the borrowers

1 are Roy and Marie Pettie, the lender is First Horizon, and the beneficiary is Mortgage Electronic  
2 Registration Systems, Inc. solely as nominee for First Horizon. Defendant Saxon Mortgage Services  
3 services the Petties' loan.

4 On February 14, 2008 Plaintiffs filed suit for rescission of the contract and damages under the  
5 Truth in Lending Act (TILA). [Amended Complaint Dkt. # 10] Plaintiffs claim that Defendants failed to  
6 provide documents and disclosures required by TILA. *Id.* Defendant Saxon moves for summary judgment  
7 or a more definite statement, arguing that as a servicer of the loan, they are not liable to Plaintiffs under  
8 TILA. [Dkt. # 16] Plaintiffs respond by asserting a new claim against Saxon under the Real Estate  
9 Settlement Procedures Act (RESPA). [Dkt. # 19]

## 11 DISCUSSION

### 12 A. Defendant Saxon's Motion for Summary Judgment or a More Definite Statement

13 Plaintiffs brought suit against defendant Saxon for violations of TILA. [Amended Complaint Dkt. #  
14 10] Defendant Saxon responds that as a servicer of the loan, and not a creditor, it is not liable under TILA.  
15 [Dkt. # 16]

16 Summary Judgment is appropriate "if the pleadings, depositions, answers to interrogatories and  
17 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material  
18 fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56©). The moving  
19 party is entitled to summary judgment if, after satisfying its initial burden, the non-moving party fails to  
20 present specific facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S.  
21 317, 324 (1986). "The mere existence of a scintilla of evidence in support of the non-moving party's  
22 position is not sufficient." *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995).  
23 Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the  
24 consideration of a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
25 (1986). In other words, summary judgment should be granted where the nonmoving party fails to offer  
26 evidence from which a reasonable finder of fact could return a decision in the nonmoving party's favor.  
27 *Triton Energy*, 68 F.3d at 1220.

1 Civil liability under TILA only applies to creditors, not servicers. 15 U.S.C. § 1640(a). A creditor  
2 is someone who “(1) regularly extends... consumer credit,” and “(2) is the person to whom the debt ... is  
3 initially payable on the face of the indebtedness, or if there is no such evidence of indebtedness, by  
4 agreement.” 15 U.S.C. § 1602(f). Conversely, a servicer is the party receiving periodic payments from the  
5 borrower and applying them to the beneficiary. 12 U.S.C. § 2605(i)(3).

6 Plaintiffs admit in their response that Saxon is not a creditor, but a servicer. [Dkt. # 19] Plaintiffs  
7 also did not respond to Saxon’s motion for a more definite statement as to any cause of action under TILA  
8 in their Amended Complaint. [Dkt. # 19] Therefore, Plaintiffs cannot seek relief against Saxon under  
9 TILA as a matter of law. Plaintiffs’ TILA claims against Defendant Saxon are DISMISSED.

10 **B. Plaintiffs’ Request for Leave to Amend their Complaint**

11 Plaintiffs assert a claim against Defendant Saxon Mortgage Services under the Real Estate  
12 Settlement Procedures Act (RESPA) for the first time in their response to Saxon’s motion for summary  
13 judgment. [Dkt. # 19] Defendant Saxon does not oppose Plaintiffs’ request to amend, and replies that this  
14 new claim allows Plaintiffs to attempt to add a cause of action to a Second Amended Complaint. [Dkt. #  
15 20]

16 Leave to amend a complaint under Federal Rule of Civil Procedure 15(a) “shall be freely given  
17 when justice so requires.” *Forman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962). Leave to  
18 amend should be granted unless amendment would cause prejudice to the opposing party, is sought in bad  
19 faith, is futile, or creates undue delay. *Id.* Prejudice is the most important of these factors and the  
20 “prejudice must be substantial” in order for leave to be denied. *Morongo Band of Mission Indians v. Rose*,  
21 893 F.2d 1074, 1079 (9th Cir. 1990).

22 Defendant Saxon Mortgage has not alleged that allowing Plaintiffs to amend their Complaint would  
23 cause any prejudice, create undue delay, is futile, or was sought in bad faith. [Dkt. # 20] Indeed, Saxon  
24 recognizes in their reply to Plaintiff’s response that Plaintiffs may seek to add to their claims. *Id.*

25 Plaintiffs are GRANTED leave to amend their complaint to add a RESPA claim against Defendant  
26 Saxon Mortgage.

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2  
3 **CONCLUSION**

4 Defendant Saxon Mortgage's motion for summary judgment on Plaintiff's TILA claims is  
5 GRANTED. The Court GRANTS Plaintiffs leave to amend their complaint to add a RESPA claim against  
6 Saxon Mortgage Services.

7 IT IS SO ORDERED.

8 DATED this 8<sup>th</sup> day of October, 2008.  
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12 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE  
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